

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of)
)
Application of)
)
Capitol Radiotelephone Inc.)
d.b.a. Capitol Paging)
1420 Kanawha Blvd. E.)
Charleston, West Virginia 25301)
)
For a Private Carrier Paging Facility)
on the Frequency 152.480 MHz in)
Huntington/Charleston, West Virginia)
)
and)
)
Imposition of Forfeiture Against)
)
Capitol Radiotelephone Inc.)
d.b.a. Capitol Paging)
1420 Kanawha Blvd. E.)
Charleston, West Virginia 25301)
)
Former Licensee of Station WNSX-646)
in the Private Land Mobile Radio)
Services)
)
and)
)
Revocation of License of)
)
Capitol Radio Telephone Inc.)
d.b.a. Capitol Paging)
1420 Kanawha Blvd. E.)
Charleston, West Virginia 25301)
)
Licensee of Station WNDA-400 in the)
Private Land Mobile Radio Services)
)
and)
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Revocation of License of)
)
Capitol Radio Telephone Inc.)
d.b.a. Capitol Paging)
1420 Kanawha Blvd. E.)
Charleston, West Virginia 25301)
)
Licensee of Station WNNW-636 in the)
Private Land Mobile Radio Services)

PR Docket No. 93-231

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OFFICE OF THE
SECRETARY

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 1420 Kanawha Boulevard East)
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 Licensee of Station KWU-373 in the)
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 Capitol Radiotelephone Company, Inc.)
 1420 Kanawha Boulevard)
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 Licensee of Station KWU-204 in the)
 Public Mobile Radio Service)

To: Administrative Law Judge Joseph Chachkin

JOINT MOTION FOR
APPROVAL OF CONSENT AGREEMENT

The Chief, Private Radio Bureau, Capitol Radiotelephone, Inc. (Capitol)
 and RAM Technologies Inc. (RAM), by their respective attorneys, jointly move

that the attached Consent Agreement be approved, that the attached Consent Order be issued, that the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing released by the Commission on August 31, 1993, be dismissed and that this proceeding be terminated. In support thereof, the movants represent:

1. By Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing the Commission (1) designated the application of Capitol Radiotelephone Inc. for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia for hearing; (2) ordered Capitol to show cause why the radio station licenses set forth in the caption should not be revoked, and (3) provided Capitol with an opportunity for hearing on whether an Order of Forfeiture should be issued against Capitol. The Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing was based on allegations concerning Capitol's application for and operation of private carrier paging (PCP) station WNSX646 in the Private Land Mobile Radio Services, and Capitol's responses to Commission inquiries regarding its application for and operation of station WNSX646. The Commission made the Private Radio Bureau and RAM parties to the proceeding.

2. Capitol, the Private Radio Bureau and RAM all filed notices of appearance in this matter. A hearing was scheduled for January 4, 1994 in Washington, D.C. A prehearing conference was scheduled for October 29, 1993. Pursuant to the Order Prior to Prehearing Conference released September 27, 1993 counsel for all parties met on October 13, 1993 to confer for the purpose of exploring proposed discovery and the stipulation of uncontested facts.

3. Subsequent to the release of the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, the Chief, Private Radio Bureau and Capitol initiated negotiations concerning a possible Consent Agreement. They continued to explore such an agreement to the present time. They have reached such an accord, and RAM concurs in it. The attached Consent Agreement is intended to resolve the above-captioned action, and is contingent upon the Presiding Judge's approval of termination of this proceeding pursuant to its terms and conditions.

4. Capitol has agreed to either cancel the license for station WNSX646 or to withdraw its application for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia, whichever is appropriate. Capitol has also agreed not to obtain a license under its or any other name for a private carrier paging facility operating on shared frequencies in West Virginia, Ohio and Kentucky for a period of five years. Additionally, Capitol has agreed to admit to violations of Section 90.405(a)(3) [transmitting communications for testing purposes in a manner such that the tests were not kept to a minimum and every measure was not taken to avoid harmful interference] and Section 90.425(b)(2) [identifying transmissions by Morse Code at a rate less than 20-25 words per minute] and to pay a forfeiture in the amount of \$10,000 for these violations. Further, Capitol has agreed to make a separate voluntary contribution of \$17,500 to the United States Treasury. Capitol has made assurances that as a Commission licensee it will in the future comply with Commission Rules and the Communications Act of 1934, as amended.

5. The Chief, Private Radio Bureau agrees to a termination of this matter. The Chief, Private Radio Bureau, further agrees to mitigation of the forfeiture to be assessed in this matter to \$10,000. The movants all agree that except with respect to Capitol's admission of violations of Sections 90.405(a)(3) and 90.425(b)(2), no findings or conclusions are reached upon the merits of this matter.

6. The movants submit that approval of the attached Consent Agreement and issuance of the attached Consent Order would be in the public interest. The attached documents satisfactorily resolve the issues set forth in the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, and eliminate the need for a hearing in this proceeding. Termination of this proceeding will speed its resolution while serving the Commission's enforcement needs. It will also result in considerable saving of both public and private resources, an important concern. In light of the attached Consent Agreement, no further enforcement or public benefit would be gained from continuation of this proceeding.


For the reasons set forth above, the movants respectfully request that (1) the attached Consent Agreement be approved, (2) the attached Consent Order be issued, (3) the Hearing Designation Order, Order to Show Cause and Notice

of Opportunity for Hearing be dismissed, and (4) this proceeding be terminated.

Respectfully submitted,


Ralph A. Haller
Chief, Private Radio Bureau

By:


John J. Borkowski
Land Mobile & Microwave Div.
Attorney

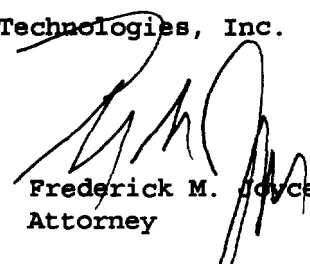
Capitol Radiotelephone, Inc.

By:


Kenneth E. Hardman
Attorney

RAM Technologies, Inc.

By:


Frederick M. Joyce
Attorney

Date: October 28, 1993

CERTIFICATE OF SERVICE

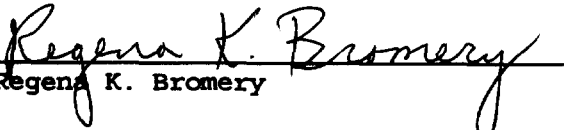
I, Regena K. Bromery, a secretary with the Private Radio Bureau, hereby certify that on this 28th day of October, 1993, copies of the foregoing Joint Motion for Approval of Consent Agreement were served, by first-class U.S. mail, upon the following:

Hon. Joseph Chachkin *
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 226
Washington, DC 20554

Kenneth E. Hardman, Esq. *
1255 23rd Street, N.W.
Suite 830
Washington, DC 20037

T. D. Kauffelt
803 Kanawha Valley Building
P. O. Box 3082
Charleston, WV 25331

Frederick M. Joyce *
Joyce & Jacobs
2300 M Street, N.W.
Suite 130
Washington, DC 20037


Regena K. Bromery

* denotes hand delivery

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CONSENT AGREEMENT

The Chief, Private Radio Bureau (PRB), Capitol Radiotelephone, Inc. (Capitol) and RAM Technologies, Inc. (RAM), by their respective attorneys, join in this Consent Agreement to fully and completely resolve the above-

captioned action. The terms and conditions of this Consent Agreement are as follows:

1. The Chief, Private Radio Bureau (PRB), Capitol Radiotelephone, Inc. (Capitol) and RAM Technologies, Inc. (RAM) admit to the jurisdiction of the Honorable Joseph Chachkin over the proceedings in PR Docket No. 93-231, and agree that the terms and conditions of this entire Consent Agreement are conditioned upon and subject to the approval of the Presiding Judge.

2. PRB, Capitol and RAM waive the usual procedures for preparation and review of an initial decision in PR Docket No. 93-231, and agree that the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing may be used in construing this Consent Agreement.

3. PRB, Capitol and RAM waive the right of judicial review over and waive the right to otherwise challenge or contest the validity of the final order terminating the above-captioned proceeding in accordance with the terms and conditions of the Consent Agreement.

4. If they are properly deemed to be still pending before the Commission, Capitol agrees to voluntarily dismiss its applications for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia¹ within thirty days of the date that the Consent Order in this matter becomes final.² In such event, Capitol agrees to voluntarily dismiss these pending applications by writing to the appropriate

¹ These applications include its original application filed in March 1990 (File No. 190207), a modification filed in February 1991 (File No. 018410) and a further modification filed in December 1991 (File No. 045862).

² For purposes of this Consent Agreement, such a Consent Order will be deemed "final" when the time for review has passed without rejection or modification of the Consent Order by the Commission. Generally, a Consent Order is "final" on the fifty-first day after its release. See 47 C.F.R. §§ 1.276(a)(1) and 1.276(b)

arm of the Federal Communications Commission at the address specified in the Commission's Rules. Capitol agrees that if it fails to voluntarily dismiss these pending applications within thirty days of the date that the Consent Order in this matter becomes final the Commission may dismiss these applications with prejudice.

5. Alternatively, in the event that the applications referenced in paragraph four of this Consent Agreement are properly deemed to have been granted and Capitol is the current licensee of station WNSX646, Capitol agrees to surrender private carrier paging (PCP) license WNSX646 for cancellation within thirty days of the date that the Consent Order in this matter becomes final. Capitol also agrees, regardless of the status of the license for station WNSX646, to surrender the licenses for any other stations that had been associated with station WNSX646 within thirty days of the date that the Consent Order in this matter becomes final. Capitol agrees to effectuate such cancellation of any licenses by sending those licenses and any associated correspondence to the following address: Federal Communications Commission, Private Radio Bureau, Land Mobile and Microwave Division, STOP 1700A1 (Attention: John J. Borkowski), Washington, D.C., 20554.

6. Capitol agrees not to obtain a PCP license for any shared frequency under its own or any other name in the States of West Virginia, Ohio and Kentucky for five years from the date that the Consent Order in this matter becomes final.³ PRB agrees that this restriction does not in any way bar or otherwise restrict Capitol from continuing to hold licenses in the Common Carrier Public Mobile Radio Service, and does not bar or otherwise restrict

³ Capitol's promise will be construed as a promise to refrain from becoming licensed in West Virginia, Ohio and Kentucky for a period of five years on any shared paging spectrum authorized by the Commission.

Capitol from applying for and holding other Common Carrier licenses. PRB further agrees that this restriction does not bar or otherwise restrict Capitol from applying for and holding non-PCP licenses or PCP licenses for non-shared frequencies issued by PRB, and that it does not bar or otherwise restrict Capitol from applying for and holding any other types of licenses issued by the Commission.

7. Capitol admits to violations of Sections 90.405(a)(3)⁴ and 90.425(b)(2)⁵ of the Commission's Rules during the period August 12-15, 1991. Capitol agrees to pay a forfeiture in the amount of \$10,000 for violations of these rules. Because it will best conduce to the proper dispatch of business and the ends of justice,⁶ PRB agrees to mitigation of the forfeiture in this matter to \$10,000. Capitol will pay this forfeiture within ten days of the date that the Consent Order in this matter becomes final, in accordance with written instructions issued by PRB.

8. Capitol agrees to make a voluntary monetary contribution to the United States Treasury in the amount of \$17,500 in recognition of the costs of enforcement efforts that ensure the efficient operation of PCP operations. Capitol will make this contribution within ten days of the date that the

⁴ Section 90.405(a)(3), 47 C.F.R. § 90.405(a)(3), provides in pertinent part: "(a) Stations licensed under this part may transmit only the following types of communications: ... (3) Communications for testing purposes required for proper station and system maintenance. However, each licensee shall keep such tests to a minimum and shall employ every measure to avoid harmful interference."

⁵ Section 90.425(b)(2), 47 C.F.R. § 90.425(b)(2), states: "The Morse code transmission rate shall be maintained between 20 and 25 words per minute."

⁶ See 47 U.S.C. § 154(j).

Consent Order in this matter becomes final, in accordance with written instructions issued by PRB.

9. Capitol agrees that it will not, nor will it induce third parties to, deliberately violate Sections 90.405(a)(3) or 90.425(b)(2) of the Commission's Rules in the future, and that it will not intentionally cause harmful interference to any authorized communications. Capitol further agrees that as a Commission licensee it shall endeavor in good faith to operate in compliance with the Commission's rules and in compliance with the provisions of the Communications Act of 1934, as amended.

10. PRB, Capitol and RAM agree that this document serves to resolve all issues specified in the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing in this matter. PRB agrees that no further action will be taken or initiated against Capitol or any station licensed to or authorization held by Capitol on the basis of the facts and allegations underlying the issuance of the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing in this matter. PRB reserves the right, however, to refer to the admitted violations in this matter for the purpose of establishing repeated or like and similar acts should Capitol become the respondent in proceedings based upon any subsequent alleged violations of the Commission's Rules or the Communications Act of 1934, as amended.

11. PRB, Capitol and RAM each agree to assume their own costs, including attorney fees, in the above-captioned matter. Capitol and RAM waive any rights to seek awards of costs or fees related to the above-captioned matter from the United States, the Commission, the Private Radio Bureau or its

Chief and/or the Common Carrier Bureau and its Chief. See 5 U.S.C. § 504 and
28 U.S.C. § 2412 (the Equal Access to Justice Act).

Ralph A. Haller
Chief, Private Radio Bureau

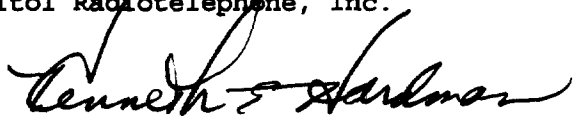
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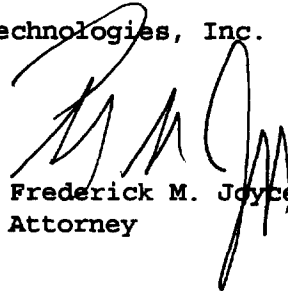
By:



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RAM Technologies, Inc.

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Frederick M. Joyce
Attorney

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CONSENT ORDER

Issued: ; Released:

1. By Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing the Commission (1) designated the application of Capitol Radiotelephone Inc. (Capitol) for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia for hearing;

(2) ordered Capitol to show cause why the radio station licenses set forth in the caption should not be revoked, and (3) provided Capitol with an opportunity for hearing on whether an Order of Forfeiture should be issued against Capitol. The Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing was based on allegations concerning Capitol's application for and operation of private carrier paging (PCP) station WNSX646 in the Private Land Mobile Radio Services, and Capitol's responses to Commission inquiries regarding its application for and operation of station WNSX646. The Commission made the Private Radio Bureau (PRB) and RAM Technologies, Inc. (RAM) parties to the proceeding.

2. The Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing designated the following issues:

a. Whether, during the month of October 1990, from November 15, 1990 through November 18, 1990, on March 4, 1991, on March 19, 1991, and/or from July 17, 1991 through July 19, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully, maliciously and/or repeatedly caused private land mobile radio station WNSX-646 to transmit in a manner that caused harmful interference, in violation of Section 90.403(e) of the Commission's Rules, 47 C.F.R. § 90.403(e), and/or in violation of Section 333 of the Communications Act of 1934, as amended, 47 U.S.C. § 333.

b. Whether, on August 12, 13, 14, and 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully, maliciously and/or repeatedly caused private land mobile radio station WNSX-646 to transmit in a manner that caused harmful interference, in violation of Section 90.403(e) of the Commission's Rules, 47 C.F.R. § 90.403(e), and/or in violation of Section 333 of the Communications Act of 1934, as amended, 47 U.S.C. § 333.

c. Whether, from November 15, 1990 through November 18, 1990, on March 4, 1991, and/or from July 17, 1991 through July 19, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully and/or repeatedly caused private land mobile radio station WNSX-646 to transmit communications for testing purposes in a manner such that the tests were not kept to a minimum and every measure was not taken to avoid harmful interference, in violation of Section 90.405(a)(3) of the Commission's Rules, 47 C.F.R. § 90.405(a)(3).

d. Whether, on August 12, 13, 14, and/or 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully and/or repeatedly caused private land mobile radio station WNSX-646 to transmit communications for testing purposes in a manner such that the tests were not kept to a minimum and every measure was not taken to avoid harmful interference, in violation of Section 90.405(a) (3) of the Commission's Rules, 47 C.F.R. § 90.405(a) (3).

e. Whether, on August 12, 13, 14, and/or 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully and/or repeatedly caused private land mobile radio station WNSX-646 to identify its transmissions by Morse code at a rate less than 20-25 words per minute, in violation of Section 90.425(b) (2) of the Commission's Rules, 47 C.F.R. § 90.425(b) (2).

f. Whether from November 15, 1990 through November 18, 1990 Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. caused private land mobile radio station WNSX-646 to willfully and/or repeatedly transmit on the frequency 152.480 MHz for purposes other than completing private carrier pages, in violation of Sections 90.173(b) and 90.403(c) of the Commission's Rules, 47 C.F.R. §§ 90.173(b) and 90.403(c). Further, whether the content of these transmissions included common carrier paging traffic in violation of Section 90.415(b) of the Commission's Rules, 47 C.F.R. § 90.415(b).

g. Whether, beginning on or about August 27, 1992 and continuing to the present, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d.b.a. Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. caused private land mobile radio station WNSX-646 to willfully and/or repeatedly transmit on the frequency 152.480 MHz for purposes other than completing private carrier pages, in violation of Sections 90.173(b) and 90.403(c) of the Commission's Rules, 47 C.F.R. §§ 90.173(b) and 90.403(c). Further, whether the content of these transmissions included common carrier paging traffic in violation of Section 90.415(b) of the Commission's Rules, 47 C.F.R. § 90.415(b).

h. Whether in written and/or oral statements to the Commission or its staff with respect to the above matters, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., Capitol Radiotelephone Company (Co.) Inc., and/or any of these entities doing business as Capitol Paging misrepresented facts to the Commission and/or was lacking in candor.

i. Whether, in light of the findings under paragraph (h), any of the above captioned applicants/licensees willfully or repeatedly violated Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17.

j. In light of the findings under paragraphs (a) through (i), whether Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., Capitol Radiotelephone Company (Co.), Inc., and/or any of these entities doing business as Capitol Paging have the requisite basic character qualifications to continue to remain Commission licensees.

k. In light of the findings under paragraphs (a) through (j), whether Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., Capitol Radiotelephone Company (Co.), Inc., and/or any of these entities doing business as Capitol Paging are qualified to retain each of their respective licenses set forth in the caption of this proceeding.

l. In light of the findings under paragraphs (a) through (k), whether any or all of the captioned radio station licenses should be revoked.

m. In light of the findings under paragraphs (a) through (l), whether Capitol Radiotelephone Inc. d.b.a. Capitol Paging filed an application for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia (File No. 0190207) primarily for the purpose of obtaining a license in order to cause harmful interference to station WNNJN-621 licensed to RAM Technologies Inc.

n. In light of the findings under paragraphs (a) through (m), whether the application of Capitol Radiotelephone Inc. d.b.a. Capitol Paging for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia (File No. 0190207) should be granted.

3. The Chief, Private Radio Bureau, Capitol and RAM all filed notices of appearance in this matter. A hearing was scheduled for January 4, 1994 in Washington, D.C. A prehearing conference was scheduled for October 29, 1993. Pursuant to the Order Prior to Prehearing Conference released September 27, 1993 counsel for all parties met on October 13, 1993 to confer for the purpose of exploring proposed discovery and the stipulation of uncontested facts.

4. Subsequent to the release of the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, the Chief, Private Radio Bureau and Capitol initiated negotiations concerning a possible Consent Agreement. They continued to explore such an agreement to the present time. They have reached such an accord, and RAM concurs in it. The Consent Agreement is intended to resolve the above-captioned action. On October 25, 1993 the parties to this proceeding filed a joint motion for approval of

consent agreement pursuant to Section 1.93 of the Commission's Rules, 47 C.F.R. § 1.93.

5. The Chief, Private Radio Bureau, Capitol and RAM have entered into the following consent agreement:

1. The Chief, Private Radio Bureau (PRB), Capitol Radiotelephone, Inc. (Capitol) and RAM Technologies, Inc. (RAM) admit to the jurisdiction of the Honorable Joseph Chachkin over the proceedings in PR Docket No. 93-231, and agree that the terms and conditions of this entire Consent Agreement are conditioned upon and subject to the approval of the Presiding Judge.

2. PRB, Capitol and RAM waive the usual procedures for preparation and review of an initial decision in PR Docket No. 93-231, and agree that the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing may be used in construing this Consent Agreement.

3. PRB, Capitol and RAM waive the right of judicial review over and waive the right to otherwise challenge or contest the validity of the final order terminating the above-captioned proceeding in accordance with the terms and conditions of the Consent Agreement.

4. If they are properly deemed to be still pending before the Commission, Capitol agrees to voluntarily dismiss its applications for a private carrier paging facility on the frequency 152.480 MHz in Huntington/ Charleston, West Virginia¹ within thirty days of the date that the Consent Order in this matter becomes final.² In such event, Capitol agrees to voluntarily dismiss these pending applications by writing to the appropriate arm of the Federal Communications Commission at the address specified in the Commission's Rules. Capitol agrees that if it fails to voluntarily dismiss these pending applications within thirty days of the date that the Consent Order in this matter becomes final the Commission may dismiss these applications with prejudice.

¹ These applications include its original application filed in March 1990 (File No. 190207), a modification filed in February 1991 (File No. 018410) and a further modification filed in December 1991 (File No. 045862).

² For purposes of this Consent Agreement, such a Consent Order will be deemed "final" when the time for review has passed without rejection or modification of the Consent Order by the Commission. Generally, a Consent Order is "final" on the fifty-first day after its release. See 47 C.F.R. §§ 1.276(a)(1) and 1.276(b)

5. Alternatively, in the event that the applications referenced in paragraph four of this Consent Agreement are properly deemed to have been granted and Capitol is the current licensee of station WNSX646, Capitol agrees to surrender private carrier paging (PCP) license WNSX646 for cancellation within thirty days of the date that the Consent Order in this matter becomes final. Capitol also agrees, regardless of the status of the license for station WNSX646, to surrender the licenses for any other stations that had been associated with station WNSX646 within thirty days of the date that the Consent Order in this matter becomes final. Capitol agrees to effectuate such cancellation of any licenses by sending those licenses and any associated correspondence to the following address: Federal Communications Commission, Private Radio Bureau, Land Mobile and Microwave Division, STOP 1700A1 (Attention: John J. Borkowski), Washington, D.C., 20554.

6. Capitol agrees not to obtain a PCP license for any shared frequency under its own or any other name in the States of West Virginia, Ohio and Kentucky for five years from the date that the Consent Order in this matter becomes final.³ PRB agrees that this restriction does not in any way bar or otherwise restrict Capitol from continuing to hold licenses in the Common Carrier Public Mobile Radio Service, and does not bar or otherwise restrict Capitol from applying for and holding other Common Carrier licenses. PRB further agrees that this restriction does not bar or otherwise restrict Capitol from applying for and holding non-PCP licenses or PCP licenses for non-shared frequencies issued by PRB, and that it does not bar or otherwise restrict Capitol from applying for and holding any other types of licenses issued by the Commission.

7. Capitol admits to violations of Sections 90.405(a)(3)⁴ and 90.425(b)(2)⁵ of the Commission's Rules during the period August 12-15, 1991. Capitol agrees to pay a forfeiture in the amount of \$10,000 for violations of these rules. Because it will

³ Capitol's promise will be construed as a promise to refrain from becoming licensed in West Virginia, Ohio and Kentucky for a period of five years on any shared paging spectrum authorized by the Commission.

⁴ Section 90.405(a)(3), 47 C.F.R. § 90.405(a)(3), provides in pertinent part: "(a) Stations licensed under this part may transmit only the following types of communications: ... (3) Communications for testing purposes required for proper station and system maintenance. However, each licensee shall keep such tests to a minimum and shall employ every measure to avoid harmful interference."

⁵ Section 90.425(b)(2), 47 C.F.R. § 90.425(b)(2), states: "The Morse code transmission rate shall be maintained between 20 and 25 words per minute."

best conduce to the proper dispatch of business and the ends of justice,⁶ PRB agrees to mitigation of the forfeiture in this matter to \$10,000. Capitol will pay this forfeiture within ten days of the date that the Consent Order in this matter becomes final, in accordance with written instructions issued by PRB.

8. Capitol agrees to make a voluntary monetary contribution to the United States Treasury in the amount of \$17,500 in recognition of the costs of enforcement efforts that ensure the efficient operation of PCP operations. Capitol will make this contribution within ten days of the date that the Consent Order in this matter becomes final, in accordance with written instructions issued by PRB.

9. Capitol agrees that it will not, nor will it induce third parties to, deliberately violate Sections 90.405(a)(3) or 90.425(b)(2) of the Commission's Rules in the future, and that it will not intentionally cause harmful interference to any authorized communications. Capitol further agrees that as a Commission licensee it shall endeavor in good faith to operate in compliance with the Commission's rules and in compliance with the provisions of the Communications Act of 1934, as amended.

10. PRB, Capitol and RAM agree that this document serves to resolve all issues specified in the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing in this matter. PRB agrees that no further action will be taken or initiated against Capitol or any station licensed to or authorization held by Capitol on the basis of the facts and allegations underlying the issuance of the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing in this matter. PRB reserves the right, however, to refer to the admitted violations in this matter for the purpose of establishing repeated or like and similar acts should Capitol become the respondent in proceedings based upon any subsequent alleged violations of the Commission's Rules or the Communications Act of 1934, as amended.

11. PRB, Capitol and RAM each agree to assume their own costs, including attorney fees, in the above-captioned matter. Capitol and RAM waive any rights to seek awards of costs or fees related to the above-captioned matter from the United States, the Commission, the Private Radio Bureau or its Chief and/or the Common Carrier Bureau and its Chief. See 5 U.S.C. § 504 and 28 U.S.C. § 2412 (the Equal Access to Justice Act).

6. The parties in their joint motion for approval of consent agreement have demonstrated that it would be in the public interest to approve this consent agreement. Capitol's assurances of future compliance with the

⁶ See 47 U.S.C. § 154(j).

Commission's Rules and the Communications Act of 1934, as amended, make a hearing in this matter unnecessary. All issues have been resolved by the parties.

7. Accordingly, IT IS ORDERED that the joint motion for approval of consent agreement filed by the Chief, Private Radio Bureau, Capitol Radiocommunication, Inc. and RAM Technologies, Inc. on October 28, 1993 IS GRANTED, and pursuant to the provisions of Sections 1.93 and 1.94 of the Commission's Rules, 47 C.F.R. §§ 1.93 and 1.94, the consent agreement IS APPROVED.

8. IT IS FURTHER ORDERED that the Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing in PR Docket No. 93-231 released by the Commission on August 31, 1993 IS DISMISSED and this proceeding IS TERMINATED.

9. IT IS FURTHER ORDERED that, unless this Consent Order is reviewed by the Commission on its own motion in accordance with Section 1.94(e) of the Commission's Rules, 47 C.F.R. § 1.94(e), it shall become effective 50 days after its public release.

Joseph Chachkin
Administrative Law Judge
Federal Communications Commission